No. 11963

In the United States Circuit Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
HERBERT A. JONES, JR.,
Appellee.

On Appeal from the United States District Court
for the District of Oregon

REPLY BRIEF FOR APPELLANT

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The appellee has attacked the Government's brief on the ground that it does not comply with Rule 20 (2) (a) in that the specifications of error are not set out with the proper particularity and in some instances omitted. While this rule has not been fully complied with, the QUESTIONS PRESENTED, SPECIFICATIONS OF ERRORS and the concise argument of the opening brief of the Government brings clearly to the Court's attention wherein the District Court erred. Although the Court has often severely criticized instances where specifications did not comply with the rule, nevertheless it has examined cases on their merits. *United States* v. *Cushman,* 136 Fed. 2d 815, 817; *Peck* v. *Shell Oil Company,* 142 Fed. 2d 141, 144.

Appellee has stated (Br. 17) that there is no specification bearing directly upon the point argued by the Government that the purported sale of these universal gear joints was void ab initio. He also expects the Government to reply to his contention that the Government is precluded from asking relief in this case because, so the appellee claims, there was compliance with Section 25 of the Surplus Property Act (50 U.S.C. App. Section 1634). The appellee has also raised the question of whether the Government is guilty of laches in bringing this suit. These matters are treated below.

I

There is proper specification in appellant's brief to support the argument that the purported sale was void ab initio.

Specification of Error 6 alleges: The District Court erred "in holding and concluding, if it so held and concluded, that the transaction between the defendant and the plaintiff's agents resulted in a valid sale."

A simple restatement of this assignment is that the Court erred in not holding that the sale of the universal gear joints was void ab initio.

It is therefore clear that the attack of the appellee that there was no specification directly bearing on this point is without foundation.

II

Government not precluded from relief by virtue of Section 25, Surplus Property Act.

Section 25 of the Surplus Property Act (50 U.S.C. App. Supp. V., Section 1634) provides a "bill of sale * * * executed by or on behalf of any Government agency purporting to transfer title or any other interest in property under this Act shall be conclusive evidence of compliance with the provision of this Act insofar as title or other interest of any bona fide purchaser for value, or lessee, as the case may be, is concerned."

The appellee quotes from House Report No. 1757, 78th Congress 2nd Session, page 17, where a statement of legislative intent is made concerning Section 25 of the Act, the purpose of this section is in the words of the report "These two provisions are designed clearly to assure to purchasers that *agencies* selling property of the government have full authority to do so, and that the purchaser's title cannot be invalidated because of the failure of a government *agency* to comply with a requirement of the Act." It should be noted that the lawmakers refer to compliance by an *agency*. It makes no reference as to individuals attempting to act for a government agency, but without authority, which is the case in this instance. The Act provides in Section 10 (a) (50 U.S.C. App. Supp. V, Section 1619a)

> The Board shall designate one or more government agencies to act as disposal agencies under this Act. In exercising its authority to designate disposal agencies, the Board shall assign surplus property for disposal by the fewest number of government agencies practicable and, so far as it deems feasible, shall centralize in one disposal agency responsibility for the disposal of all property of the same type or class.

And again in Section 15 (50 U.S.C. App. Supp. V, Section 1624)

> (a) Nothwithstanding the provisions of any other law but subject to the provisions of this Act, whenever any government *agency* is authorized to dispose of property under this Act, then the *agency* may dispose

of such property by sale, exchange, lease, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions, as the *agency* deems proper: * * *

(b) Any *owning agency* or *disposal agency* may execute such documents for the transfer of title or other interest in property or take such other action as it deems necessary or proper to transfer or dispose of property or otherwise to carry out the provisions of this Act, and, in the case of surplus property, shall do so to the extent required by the regulations of the Board.

Throughout the Act is reference to the owning agency and the disposal agency, which shows that the Congress intended when one agency disposed of property of another and gave a bill of sale as provided in Section 25 of the Act, that in that type of transaction instruments executed by a government agency are conclusive evidence of compliance with the provisions of the Act. All of the provisions in Sections 15 and 25 are to protect the purchaser from claims of one agency that another could not sell property owned by it. There is no indication in the Act itself, or in the committee report, that Congress ever intended that a person not properly authorized by law to act for the Government agency could execute an instrument and transfer title of Government property. As pointed out in the Government's opening brief at page 17, the law is firmly settled that the United States can be bound only by agents acting strictly within their authority and that persons dealing with agents

of the United States are charged with notice of limitation of the agent's authority. *Utah Power & Light Company* v. *United States,* 243 U. S. 389; *United States* v. *City and County of San Francisco,* 310 U. S. 16, 54 Am. Jur., U. S. Section 92. Had Congress intended to change this long-established rule, it surely would have made such change clear in the Act and would have mentioned the change in its report by more than stating that this section was to assure purchasers that the *agencies* selling the property have authority to do so. Section 25 of the Act applies only to disposition of property by agencies and not to disposition of property by unauthorized agents.

III

Government is not guilty of laches.

The appellee maintains in his brief (P. 53) that the government is guilty of laches in not bringing this suit until eleven months after the purported sale was consummated. That statutes of limitations in civil matters do not run against the United States is such a basic rule of law that no authorities need be cited. On the equity side of the court it is a well settled parallel rule that the government is not chargeable with laches. *Utah Power and Light Company* v. *United States,* 243 U. S. 389; 54 Am. Jur. 630, 631, United States, Secs. 123 and 124. There is in evidence in this case the pleadings in the state court in an action brought by

appellee Jones against C. T. Mudge, D. M. Gibson and S. M. Buffett as individuals. (Defendants' Exhibits 12(a) to (g)). The amended complaint shows the date of March 12, 1947, and thereafter counsel agreed to abate the action in the state court, pending an action to be filed where the government would be a party, which is this suit. (R. 138) This suit was filed in the Federal District Court in September, 1947. There is no basis for a defense of laches, even if it were chargeable to the United States.

CONCLUSION

As supported by the above argument, it is submitted that there is proper specification of error as to the purported sale being void; Section 25 of the Surplus Property Act does not afford the appellee a defense against the established rule that all persons are charged with knowledge of authority of government agents; and the government is in no way chargeable with laches.

Respectfully submitted,

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